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To: Nicole Alvino/HOU/ECT, Barry Schnapper/Corp/Enron, ryan siurek
CC:
Subject: LJM Approval Sheets for Avici, Catalytica (Confidential Attorney/Client Communications)

Before the week gets away from us (and in lieu of having a formal meeting), I thought it may be helpful if I summarized the points I wanted to pass-onto you regarding the LJM Approval Sheet process. These points are applicable across the board regarding preparation of such Approval Sheets, but Avici/Catalytica are referenced by way of example.

Nicole has advised that if there is a general "theme" or guideline to follow in the preparation process, it is to be as innocuous as possible in terms of description, detail, etc. I understand the sensitivities that such approach is responding to. On the other hand, looking through my legal blinders, I'm inclined to want to see as much detail as possible -- under the assumption that such information will further substantiate the arm's-length nature of the transaction. This, in turn, provides evidence of Senior Management and the Board's carrying out their fiduciary duties, absence of a "sweetheart" deal, and the "legitimacy" of the financial treatment resulting from the transaction. In addition, by holding originators, etc accountable for negotiating the best deal available in a responsible manner, ie. starting the process early and thoroughly before turning to alternative resources, helps ensure proactive, in-the-best-interests-of the Company/shareholders behavior and further legitimizes those instances where LJM does become our counterparty. (In fact, if we were able to satisfy that level of substantiation, there is a reasonable argument that the underlying transaction would not have to be disclosed for Proxy purposes, although it is likely that it still would have to be disclosed in the financial statement footnotes). To that end, by way of example, our justification for turning to LJM because "no other transaction could be closed in a timely manner...." is self-serving, as is the check-off (without explanation) that the "transaction [is] the most beneficial to Enron" and (also without explanation) that the "transaction [was] done strictly on an arm's-length basis."

I appreciate that the issues I am raising go beyond the responsibilities of the "poor associate" charged with preparing the LJM Approval Sheet; nevertheless, the process, as I have outlined above, needs to be materially improved if we are called to task to demonstrate the arm's-length nature/fairness of any transaction entered into between Enron and LJM. There needs to be a rigorous adherence to the "spirit" of the processes to be undertaken as reflected in the Approval Sheet. These points are going to be further developed in a memo I am currently preparing for the benefit of Rick Causey and Rick Buy.

Please let me know your thoughts, suggestions.
Thanks.
Jordan

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